

DOCKET FILE COPY ORIGINAL

CC Docket #96-98  
~~CC 96-98-30~~

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the matter of )  
 )  
Request of Association for Local ) CPD 97-30  
Telecommunications Services for )  
Clarification of the Commission's Rules )  
Regarding Reciprocal Compensation for )  
Information Service Provider Traffic )

RECEIVED  
AUG 12 1998  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

COMMENTS OF VANGUARD CELLULAR SYSTEMS, INC.

Vanguard Cellular Systems, Inc. ("Vanguard"), by its attorneys, hereby submits its comments in the above-referenced proceeding.<sup>1/</sup> For the reasons described below, the Commission should grant the ALTS Request and should clarify that incumbent LECs may not unilaterally claim that traffic directed to points within the local calling area specified in an interconnection agreement does not qualify as local traffic for purposes of compensation for transport and termination. Recent events demonstrate that such a clarification is necessary to prevent incumbent LECs from repeating their longstanding pattern of attempting to avoid their obligations to co-carriers.

I. Introduction

Vanguard is one of the 20 largest cellular carriers in the country, serving more than 595,000 customers in 29 cellular MSAs and RSAs in eight states. Vanguard has been providing cellular service since 1984 and, consequently, has long experience with incumbent

---

<sup>1/</sup> See "Pleading Cycle Established for Comments on Request by ALTS for Clarification of the Commission's Rules Regarding Reciprocal Compensation for Information Service Provider Traffic," *Public Notice*, CCB/CPD 97-30, rel. Jul. 2, 1997 (the "*Public Notice*").

No. of Copies rec'd  
List A B C D E

2

LEC tactics in interconnection negotiations and in implementation of interconnection agreements.

Vanguard is one of many carriers that were deprived of compensation for terminating calls from incumbent LEC customers from the inception of cellular service until the Commission required incumbent LECs to pay such compensation in last year's *Local Competition Order*.<sup>2/</sup> During that time, Vanguard was an active participant in cooperative efforts by cellular carriers to negotiate cost-based interconnection agreements. While these efforts resulted in lower interconnection charges, they were unsuccessful in negotiating rates that actually were cost-based or that were reciprocal. Thus, Vanguard has significant experience with incumbent LEC attempts to avoid paying reciprocal compensation.

In addition, Vanguard has an interest in this proceeding as a potential competitive LEC. As an existing carrier with facilities, including switching, in place, Vanguard could be a potent competitor to incumbent LECs in its service territory. Vanguard's competitive potential, however, depends greatly on its ability to obtain fair terms and conditions for interconnection.

For these reasons, Vanguard has a vital interest in swift, decisive action in this proceeding. The Commission must establish that incumbent LECs cannot avoid their reciprocal compensation obligations and that, in particular, incumbent LECs cannot unilaterally declare certain types of traffic to be exempt from the reciprocal compensation obligation. Otherwise, incumbent LECs will leverage their monopoly power, just as they did

---

<sup>2/</sup> See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, *First Report and Order*, CC Dkt. No. 96-98, FCC 96-325 (rel. Aug. 8, 1996) at ¶ 1094 (the "*Local Competition Order*").

over the last fifteen years in their dealings with cellular providers, to the disadvantage of their competitors and consumers of telephone services.

## **II. Incumbent LEC Efforts to Avoid Paying Reciprocal Compensation for Internet Traffic Are Part of a Continuing Pattern.**

The ALTS Request establishes that incumbent LECs are engaged in a conscious, probably coordinated effort to avoid paying compensation for traffic directed to Internet service providers.<sup>3/</sup> While it is apparent, as described in more detail below, that there is no basis for the incumbent LEC refusal to pay terminating compensation, the Commission also should recognize that this is part of a pattern that was established when cellular service began and that has continued even after the Telecommunications Act of 1996 and the Commission's rules mandated reciprocal compensation.

Vanguard's experience with incumbent LECs parallels that of every other cellular carrier. To provide service, Vanguard had to have interconnection, and had no choice but to turn to incumbent LECs for that interconnection. The incumbent LECs used their monopoly power to force Vanguard, and every other cellular carrier, to accept rates that were not cost-based. Moreover, cellular carriers, almost without exception, were not compensated for terminating traffic on behalf of incumbent LECs. Indeed, incumbent LECs continued to deny terminating compensation to cellular carriers even after the Commission adopted a

---

<sup>3/</sup> ALTS Request at 6. It is interesting to note that other information service providers do not appear to be included within the incumbent LECs' efforts.

specific rule requiring reciprocal compensation.<sup>4/</sup> The Commission confirmed this experience in the *Local Competition Order* when it explained that

Based on the extensive record in the *LEC-CMRS Interconnection* proceeding, as well as that in this proceeding, we conclude that, in many cases, incumbent LECs appear to have imposed arrangements that provide little or no compensation for calls terminated on wireless networks, and in some imposed charges for traffic originated on CMRS providers' networks, both in violation of section 20.11 of our rules.<sup>5/</sup>

The long history of incumbent LEC intransigence in interconnection negotiations with CMRS providers led the Commission not only to affirm that the reciprocal compensation obligation applied to LEC-CMRS interconnection, but also to adopt a special rule allowing CMRS providers to abrogate their existing interconnection agreements.<sup>6/</sup> While adoption of this rule could not make up for the years of unlawful interconnection arrangements imposed on CMRS providers by incumbent LECs, it did acknowledge that, in fact, those agreements were unlawfully and unreasonably discriminatory.

Despite the plain language of the *First Report and Order*, incumbent LECs continue to attempt to avoid their obligations to CMRS providers. The most notable examples of this behavior are Southwestern Bell's efforts to coerce paging carriers into paying for calls that terminate to them, which were documented in the recent proceeding on SBC Corporation's application for interLATA authority in Oklahoma. Southwestern Bell is making these efforts despite the Commission's explicit conclusion that carriers may not impose charges on the entity that terminates a call.

---

<sup>4/</sup> See 47 C.F.R. § 22.11.

<sup>5/</sup> *Local Competition Order* at ¶ 1094.

<sup>6/</sup> *Id.* at ¶ 1095.

In this context, incumbent LEC efforts to avoid paying reciprocal compensation for termination of calls to Internet service providers are no surprise. Rather, they are part of a broader pattern of attempting to avoid their obligations to their competitors, whether those competitors are cellular providers, paging carriers or competitive LECs. The incumbent LEC efforts are particularly noteworthy because no competitive LEC has ever attempted to argue that it should be permitted to avoid payment obligations for disfavored categories of traffic, even though, for instance, incumbent LECs terminate the overwhelming majority of traffic to Internet service providers. This striking pattern of conduct demonstrates the importance of prompt Commission action in this proceeding.

**III. To Prevent Incumbent LECs from Continuing to Attempt to Avoid Their Obligations, the Commission Should Grant the ALTS Request and Specifically Delineate the Reciprocal Compensation Obligation.**

While the incumbent LECs have attempted to argue that Internet traffic should be exempted from the reciprocal compensation obligation, in practice there simply is no basis for that claim. The only possible answer to the ALTS Request is to grant it, because traffic sent to Internet service providers plainly is local traffic. Any other result would have a significant adverse effect on local competition. Moreover, in granting the ALTS Request, the Commission also should take the opportunity to clarify that incumbent LECs do not have the power to determine whether a particular type of traffic is "local" for the purposes of reciprocal compensation. The Commission also should consider Bell company efforts to avoid paying reciprocal compensation in Section 271 proceedings.

As an initial matter, there can be no question that the traffic that is the subject of the ALTS request is local traffic. A call to an Internet service provider is a local call for the

caller, terminating to a subscriber in the local calling area.<sup>2/</sup> The Internet service provider subscribes, in almost every case, to a regular business line. The LEC serving the Internet service provider cannot tell what happens to the call after it leaves the LEC's network (which also is when it leaves the public switched telephone network). In all meaningful respects, especially including the costs to the terminating carrier, a call to an Internet services provider is the same as any local call.

The incumbent LECs that seek to avoid paying terminating compensation focus on what happens to calls to Internet service providers after those calls leave the public switched telephone network, but that is irrelevant. Moreover, in practice there are at least two distinct transactions involved in each connection with an Internet service provider: (1) the connection to the Internet service provider, which indisputably is local; and (2) the Internet service provider's connection to the online network, which may be local (such as when the user sends e-mail to a neighbor or reviews information contained on the local server) or long distance (such as when the user seeks information from a distant web site). In any event, the call to the Internet service provider remains a local call; what happens after that cannot affect the nature of the call itself.

While there is no legal or factual basis for incumbent LEC claims that they need not pay compensation for calls to Internet service providers, there also are significant policy reasons to grant the ALTS Request. The incumbent LEC efforts to avoid paying compensation are an obvious reaction to their discovery that competitive LECs are targeting

---

<sup>2/</sup> For the purposes of this discussion, it is assumed that the Internet service provider is assigned a telephone number within the local calling scope of the party making the call. To the extent that is not the case, then the call would not be local.

Internet service providers as customers.<sup>8</sup> These competitive LECs have, among other things, designed business plans that assume that they will be compensated for all of the local traffic they terminate. If, however, some local traffic is not subject to compensation, then those business plans will be faulty. At the very least, losing compensation will slow the growth of competitive LECs. At most, it could make it considerably more difficult for them to remain in business.

Denying compensation for certain kinds of traffic also will have an adverse effect on customers. When reciprocal compensation is available for all types of calls, there are incentives to compete for all types of customers. If, however, compensation is not available for traffic terminated to certain types of customers, then there will be less incentive to compete for their business because, compared to other customers, there will be less opportunity to recover the costs of serving them. If, as in the case of Internet service providers, almost all of the traffic is terminating traffic, then it will be financially difficult to serve those customers. As a result, LECs will not affirmatively seek to serve those customers, or will seek to impose higher costs on them.<sup>9</sup> This result would be contrary to

---

<sup>8/</sup> Even without considering the impact of reciprocal compensation, Internet service providers are attractive customers for a variety of reasons. Among other considerations, Internet service providers tend to be high-growth companies that need advanced services that competitive LECs are well-positioned to provide. Also, Internet service providers tend to be more sophisticated than most customers about their telecommunications needs, which means they are more likely to recognize the benefits of obtaining service from a competitive LEC.

<sup>9/</sup> Incumbent LECs repeatedly have attempted to impose higher costs on Internet service providers, an effort that continues today. One reason that service from competitive LECs may be attractive to Internet service providers is that competitive LECs have not made similar efforts.

the principles of the 1996 Act, which was intended to bring the benefits of competition "to all Americans," not just to those segments of community designated by incumbent LECs.<sup>10</sup>

Indeed, incumbent LECs should have no role whatsoever in determining what sorts of traffic are "entitled" to reciprocal compensation. There is no basis in Section 251(b), in any other provision of the Communications Act or in the Commission's Rules for a carrier to unilaterally declare that certain traffic qualifies or does not qualify as local. The incumbent LEC efforts to make such declarations are particularly troubling because they all have come *after* the execution of interconnection agreements and without any effort to seek regulatory guidance. Moreover, given the opportunity to make such determinations, incumbent LECs will not hesitate to leverage their monopoly power to prevent other carriers from being compensated. As described above, they have done so in the past and continue to attempt to do so today.<sup>11/</sup>

Because incumbent LECs will continue to attempt to abuse their monopoly power in this way, the Commission should take this opportunity to describe the reciprocal compensation obligation in more detail. At the very least, the Commission should declare that all traffic that terminates within the designated local calling area is subject to reciprocal compensation, regardless of the identity of the customer receiving the call or of the volume of traffic terminated to a particular customer. Absent such a declaration, it is almost certain

---

<sup>10/</sup> See S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1 (1996) (defining purposes of 1996 Act).

<sup>11/</sup> One particularly egregious example of an attempt to leverage monopoly power is NYNEX's letter to an interconnecting party, asserting that it will refuse to pay any reciprocal compensation unless the interconnecting party agrees that Internet traffic is not subject to reciprocal compensation. See ALTS Request at Attachment 1.



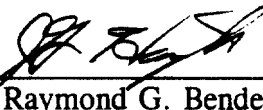
that incumbent LECs will continue to seek loopholes in the reciprocal compensation obligation and to avoid, in any way possible, making terminating compensation payments to competitive LECs, CMRS providers and other telecommunications carriers.

#### IV. Conclusion

For all these reasons, Vanguard Cellular Systems, Inc. respectfully requests that the Commission act in accordance with these comments and grant the ALTS Request.

Respectfully submitted,

VANGUARD CELLULAR SYSTEMS, INC.

By:   
Raymond G. Bender, Jr.  
J.G. Harrington

Its Attorneys

Dow, Lohnes & Albertson, PLLC  
1200 New Hampshire Avenue, Suite 800  
Washington, D.C. 20036  
(202) 776-2000

July 17, 1997

## CERTIFICATE OF SERVICE

I, Tammi A. Foxwell, do hereby certify that on this 17th day of July, 1997, I caused copies of the foregoing "Comments" to be served via first-class mail, postage prepaid (except where indicated as via hand-delivery), to the following:

\*The Honorable Reed E. Hundt  
Chairman  
Federal Communications Commission  
1919 M Street, NW, Room 814  
Washington, DC 20554

\*The Honorable James H. Quello  
Commissioner  
Federal Communications Commission  
1919 M Street, NW, Room 802  
Washington, DC 20554

\*The Honorable Susan Ness  
Commissioner  
Federal Communications Commission  
1919 M Street, NW, Room 832  
Washington, DC 20554

\*The Honorable Rachelle B. Chong  
Commissioner  
Federal Communications Commission  
1919 M Street, NW, Room 844  
Washington, DC 20554

\*Ms. Regina Keeney  
Chief, Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, NW, Room 500  
Washington, DC 20554

\*William Kennard, Esq.  
General Counsel  
Federal Communications Commission  
1919 M Street, N.W., Room 614  
Washington, D.C. 20054

\*Mr. John Nakahata  
Chief, Competition Division  
Office of General Counsel  
Federal Communications Commission  
1919 M Street, N.W., Room 614  
Washington, D.C. 20554

\*Wanda Harris  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 518  
Washington, D.C. 20054

\*International Transcription Services  
1990 M Street, NW, Room 640  
Washington, DC 20036

Richard J. Metzger, Esq.  
Ass'n for Local Telecommunications Services  
1200 19th Street, N.W., Suite 560  
Washington, DC 20036



Tammi A. Foxwell

\*Via Hand Delivery.